88-719

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1988

No._____

STANLEY V. TUCKER,

Petitioner

-v-

NORTHEAST SAVINGS, FA.
ROBERT R. BASINE,
DONNA GALLUZIO,
LORRAINE WHITEHOUSE,
d/b/a CAPITAL WEST.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

STANLEY V. TUCKER
Petitioner
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53 pp

QUESTIONS PRESENTED

1. Where the 9th CA has repeatedly held a pro se complaint cannot be dismissed without leave to amend a statement by court of amendments needed did the 2nd CA deny due process by not adopting this rule.

2. Where the Columbia Circuit has repeatedly held summary judgment cannot be granted on a pro se complaint without leave to amend and statement by court of amendments needed did the 2nd CA deny due process by not adopting this rule.

3. Where this pro se Petitioner's complaint challenged on due process ground Conn. Practice Book S 504-510 adopted by the judges in a non judicial role did the District Court have jurisdiction over this challenge.

4. Where federal law changed in 1983 on due process notice did the 2nd CA and Trial Court err holding in 1981 Petitioner could have litigated this unknown law.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

No _____

STANLEY V. TUCKER,

Petitioner

-v-

NORTHEAST (short title)

PETITION FOR A WRIT OF CERTIORARI TO
THE SECOND CIRCUIT COURT OF APPEALS

Petitioner prays that a writ of certiorari issue to review the judgment of the 2nd CA made May 2, 1988 dismissing Petitioners Appeal. Timely Petition for Re-Hearing in Banc filed and denied July 5, 1988.

CITATION TO OPINIONS BELOW

To the knowledge of this Petitioner 2nd C.A. decisions are not reported. The decisions printed in Appendix D - E - F.

JURISDICTION

The judgment of the Second Circuit Court of Appeals entered July 5th, 1988. The jurisdiction of this court is invoked under Title 28 USC 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a denial of procedural due process and equal protection of the laws the 5th and 14th amendments to the US Constitution, as set forth in Appendix B.

This case involves Conn GS 51-14 which limits state judges to rules of practice. Appendix A.

This case involves challenge to Conn P.B. 504-510 without notice of defenses prior Appendix C. to seizure of private property.

STATEMENT OF THE CASE

This action challenges the constitutionality of Conn. Practice Book 504-510 which permit the seizure of private property without giving debtor notice of

his defenses.

This action challenges Conn P.B. 504-510 on due process grounds as affecting substantial rights and being in violation of Conn. GS 51-14 limiting the state judges to "rules of procedure only"

Petitioner raised his challenge in the District Court of Conn. by civil rights complaint, First Amended Complaint 4-23-87. Trial judge dismissed the complaint on grounds he had no jurisdiction and the Petitioner "could have litigated these issues in state court".

On appeal to the 2nd CA Petitioner timely filed his Brief and Appendix. The 2nd CA dismissed on hearsay allegations repudiated under oath by this Petitioner.

Petitioner filed timely motion for re-hearing in banc based on 9th CA decisions reported in news media. Petitioner asked for reversal so he might amend with Trial Court directed to state amendments needed. Re-hearing denied.

Thus the constitutional challenge properly raised

in DC and 2nd CA and rejected on erroneous grounds.

FACTUAL BACKGROUND

The respondent bank was able in state court on hearsay motions to obtain a rent receiver under Conn P.B. 504-510 without ever giving this Petitioner notice of his defenses. Bank used the rent receiver for years to build up a mass of unpaid taxes and mortgage and with neglected conditions to secure "strict foreclosure" by low value on properties.

Within a short time the Bank resold at double the money with the property in same condition. Four properties the bank foreclosed with enormous loss of rents to this petitioner.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW IS HEAD ON CONFLICT WITH 9th CIRCUIT COURT OF APPEALS.

The Circuits are in sharp conflict on due process rights of pro se litigants and this is most important and most powerful reason for this court to grant the writ of certiorari.

Karim-Panahi v Los Angeles Police Dept
839 F 2d 621

"in pro se civil rights cases court must construe pleading liberally and must afford plaintiff benefit of any doubt; moreover before dismissing pro se complaint for failure to state a claim, district court must give plaintiff statementof complaint's deficiencies. FRCP 12(b)(6) 42 USC 1983."

While the motion to dismiss granted was for failure to state a claim the Trial Judge did not use this ground but used grounds of HIS OWN INVENTION all without leave to amend, without notice.

Noll v Carlson
809 F 2d 1446 at 1448

" The rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant. Presumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel. Indeed, the Supreme Court has held that allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520–21, 92 S.Ct. 594, 595–96, 30 L.Ed.2d 652 (1972) (Per Curiam); *see also Maurer v. Individually and as Members of Los Angeles County Sheriff's Dept.*, 691 F.2d 434, 437 (9th Cir.1982); *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir.1980). "

This Petitioner would have been delighted if the 2nd CA had reversed with directions to Trial Court to state amendments needed because surely he would have made those amendments.

Broughton v Cutter Labs
622 F 2d at 459

> " State prisoner was entitled to an opportunity to amend his pro se civil rights complaint so as to attempt to allege facts sufficient to support an action for deliberate indifference to his medical needs; while it was a close question as to whether his complaint was frivolous, dismissal of his complaint was inappropriate. "

In the lower court this Petitioner was dismissed on grounds of lack of jurisdiction over constitutional challenge to state court rules and on lack of standing although he alleged continuing damages. If he needed a statement of amendments needed he is the first person to admit it and to welcome such a statement.

Bretz v Kelman
773 F 2d at 1027

> "[1] After he was exonerated on the allegedly framed charges, Bretz filed pleadings, which, when liberally construed, allege a cause of action under 42 U.S.C. § 1983 and § 1985.[1] The district court, treating the papers as pleadings which attempted to federalize a routine state tort claim for malicious prosecution and slander, dismissed the claim. A divided panel of this court affirmed. *Bretz v. Kelman*, 722 F.2d 503 (9th Cir.1983), *withdrawn*, 729 F.2d 613 (9th Cir.1984). We took this case en banc along with two other § 1983 prisoner claims because of the importance and complexity of the questions and the doctrinal ambiguity which exists in this circuit over application of *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).[2] "

This case is of importance to all property owners in Connecticut where annually thousands of properties are foreclosed without due process of law. A constitutional challenge can never succeed if dismissed..."because it might have been litigated in state court.."

See: Garguil v Tompkins, 704 F 2d at 666
Lombard v Bd Ed NYC 502 F 2d at 675

Eldridge v Block
832 F 2d at 1135

" In exercising its discretion with regard to the amendment of pleadings, "a court must be guided by the underlying purpose of Rule 15—to facilitate decision on the merits rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981). This court has noted "on several occasions ... that the 'Supreme Court has instructed the lower federal courts to heed carefully the command of Rule 15(a), F[ed].R.Civ.P., by freely granting leave to amend when justice so requires.'" *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 765 (9th Cir. 1986) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir.1973) (citations omitted). Thus "Rule 15's policy of favoring amendments to pleadings should be applied with 'extreme liberality.'" *Webb*, 655 F.2d at 979 (citing *Rosenberg Brothers & Co. v. Arnold*, 283 F.2d 406 (9th Cir. 1960) (per curiam)).

[1] This policy is applied even more liberally to pro se litigants. Thus in *Armstrong v. Rushing*, 352 F.2d 836 (9th Cir. 1965), this court established that a pro se litigant bringing a civil rights suit must have an opportunity to amend the complaint to overcome deficiencies unless it is clear that they cannot be overcome by amendment. 352 F.2d at 837 (pro se litigant entitled to procedural protections, including right to amend complaint unless futile); *see Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987); *Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir.1970) (per curiam). "

In the 2nd CA this Petitioner was subjected to the practices of Justice Feinberg's "gas chamber for pro se" litigants. His briefs citing cases from this Honorable United States Supreme Court were not read, his cases ignored. Oral argument denied. His briefs & Appendix cycled and re-cycled in mails. His motion for re-hearing in banc denied as to his due process rights. The motion to dismiss the appeal was based on hearsay REPUDIATED UNDER OATH BY THIS PETITIONER.

II. THE DECISION BY 2nd CA IN HEAD ON CONFLICT WITH COLUMBIA CIRCUIT

The news media have reported a line of cases from the Columbia Circuit that mirror the cases, supra, from the 9th CA upholding due process right to amend with statement of amendments needed before Summary Judgment can be entered on a pro se complaint.

This petitioner has experienced difficulty in re-locating the news clip and if this Court grants the Writ of Certiorari plans to visit Washington DC to go to the Clerks Office of Columbia Circuit to find these cases and report to this court in his brief.

Two circuits in conflict with the 2nd CA are over important due process rights for pro se litigants are sound grounds for granting the writ of certiorari. Rule 17.1 (a) Rules of the United States Supreme Court

III. DISTRICT COURT MIS-STATED LAW OVER CONSTITUTIONAL CHALLENGE TO STATE COURT RULES P.B. 504-510

The District Court dismissed on grounds it lacked jurisdiction to review the state courts judgment whereas this Petitioner asked the District Court to REVIEW AND HOLD UNCONSTITUTIONAL THE STATE COURT RULES.

This is a major error on the part of the judge that he did not see the distinction the Honorable US Supreme Court has made in a line of cases attacking on constitutional grounds state court or state bar rules. This is an all important distinction that the attack is on the state court in its legislative capacity and not in its judicial capacity.

Lathrop v Donahue
357 US at 820 1960

"Integration of the Bar in Wisconsin bore no resemblance to adjudication. The State Supreme Court's action disposed of no litigation between parties. Rather the court sought to regulate the profession by applying its orders to all present members of the Bar and to all persons coming within the described class in the future. Cf. *Hamilton* v. *Regents, supra*, p. 258; *King Manufacturing Co.* v. *City Council, supra*, p. 104. As such, the action had the characteristics of legislation. We conclude that the appeal is cognizable under § 1257 (2). We therefore proceed to the consideration of the merits."

In 1976 This Honorable Court upheld a 1st Amendment challenge to Arizona State Bar prohibiting attorney advertising.

Bates v State Bar of Arizona
433 US at 384

" The constitutional issue in this case is only whether the State may prevent the publication in a newspaper of appellants' truthful advertisement concerning the availability and terms of routine legal services. We rule simply that the flow of such information may not be restrained, and we therefore hold the present application of the disciplinary rule against appellants to be violative of the First Amendment.

The judgment of the Supreme Court of Arizona is therefore affirmed in part and reversed in part."

It is so ordered.

In this action the law changed in 1983 to define and affirm due process rights to notice of defenses

where their property seized by creditor whereas this Petitioner faced four foreclosures under state court rules adopted without jurisdiction and that deny due process of law permitting a creditor bank to seize rents without notice of defenses to debtors 100% ignorant of their defenses. This Honorable Court has again and again upheld jurisdiction over constitutional challenges to state court rules adopted by the Judges in their legislative capacity and not in their judicial capacity.

See E.G. Supreme Court of Virginia v. Consumers Union
446 US 719, 731
Lathrop v Donohue, 367 US at 566
D.C. Court of Appeals v Feldman
460 US at 485 1982

" During the course of its opinion, the Court of Appeals stated:

> "The United States District Court, in denying [the plaintiff] relief, declared that there is a subtle but fundamental distinction between two types of claims which a frustrated bar applicant might bring to federal court: The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission. The Court held that while federal courts do exercise jurisdiction over many constitutional claims which attack the state's power to license attorneys involving challenges to either the rule-making authority or the administration of the rules, . . . *such is not true where review of a state court's adjudication of a particular application is sought.* The Court ruled that the latter claim may be heard, if at all, exclusively by the Supreme Court of the United States." *Id.*, at 597 (em-

"The Court of Appeals for the Tenth Circuit in Doe v. Pringle, supra, properly emphasized the distinction between general challenges to state bar admission rules and claims that a state court has unlawfully denied a particular applicant admission. We have recognized that state supreme courts may act in a nonjudicial capacity in promulgating rules regulating the bar. See, e.g.., Supreme Court of Virginia v. Consumers Union, 446 U. S. 719, 731 (1980); Lathrop v. Donohue, 367 U.S. at 827 (plurality opinion); In re Summers, 325 U. S. at 566. Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States district court to review a final state-court judgment in a judicial proceeding. Instead, the district court may simply be asked to assess the validity of a rule promulgated in a nonjudicial proceeding. If this is the case, the district court is not reviewing a state court judicial decision. In this regard, 28 U. S. C. & 1257 does not"

See also Brown v Board of Bar Examiners, 623 F 2d 605 (CA9 1980).

D.C. Court of Appeals v Feldman
460 US at 485 1982 - continued

"act as a bar to the district courts consideration of the case and because the proceedings giving rise to the rule are nonjudicial the policies prohibiting United States district court review of final state court judgments are not implicated.

United States district courts, therefore, have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state court judgment in a particular case. They do not have jurisdiction, however, over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this court. 28 U. S. S. 1257."

The District Court erred because the use of unconstitutional rules PB 504-510 is made in foreclosure actions by banks and attorneys greedy to seize property by any means fair or foul the District

Court thought he was asked to review state court judgments. SUCH IS NOT THE CASE! The D.C. was asked to review constitutionality of Conn Practice Book 504-510; state judgment-Merely a by-product of these rules!

IV. DISTRICT COURT ERRED SAYING THAT PETITIONER COULD HAVE LITIGATED LAW THAT DID NOT EXIST

This Petitioner filed his state court pleadings in 1981 based upon state law as it existed. Petitioner filed a sworn statement in lower court that he could not and did not litigate issues brought up in this cases because the law did not exist in 1981. Federal law on notice of defenses to debtors first arose in Conn. in 1983 and while in his appeal this Petitioner tried to raise this issue the Connecticut Supreme Court would not and did not address this issue as it only reviews matters or issues brought up in the Trial Court.

The claim by respondents that this action is a re-litigation is a false claim as is the statement by the District Court that this matter could have been liti-

gated in the state court. The state court proceedings started in 1979 went to final judgment in 1985 and nothing more can be litigated therein.

Wright v Tanezio
USDC Conn No 81-353 3-11-83

"Conn GS 52-361 fails to provide prior to wage execution... a speedy adequate and meaningful opportunity to be heard at a meaningful time"

Connecticut law on wage executions now amended to give debtors a form with notice of defenses and opportunity to be heard on these defenses.

See companion case challenging on same grounds Conn IRS intercept statute.

Nelson v Regan
560 F Supp 1101
Jan 14, 1983

Constitutional Law 286
Internal Revenue 4973
"Federal state intercept program, under which federal income tax refunds may be transferred to state to extent of taxpayer's past-due support obligations, violated taxpayer's due process rights, in that preintercept notice and postintercept notice failed to meet due process requirements for notice, as neither mentioned possible defenses individual might have to interception of"

"tax refunds or the availability of regular procedures in which to challenge offset, and taxpayers did not have available an opportunity to be heard at a meaningful time and in a meaningful manner. Social Security Act, 464, as amended, 42 U.S.C.A. 664; 26 U.S.C.A. 6305, 6402; U.S.C.A. Const. Amends. 5, 14."

These fundamental cases flow from Mathews v Eldridge, 424 US 319, just as this action.

"Due process requires consideration of:

First - Private interest affected by state
Second - Risk of error in procedures
Third - Government interest in added procedural requirements"

See also cases like Memphis L & P v Craft 436 US I 1978 at p I

"3. Petitioners deprived respondents of an interest in property without due process of law. Pp 12-22
(a) Notice in a case of this kind does not comport with constitutional requirements when it does not ad-vise the customer of the availability of an adminis-trative procedure for protesting a threatened termi-nation of utility services as unjustified, and since no such notice was given respondents, despite "good faith efforts" on their part, they were not accorded due notice. Pp 13-15
(b) Due process requires, at a minimum, the provision of an opportunity for presenting to designated personnel empowered to rectify error a customer's complaint that he is being overcharged or charged for services not rendered, and here such a procedure was not made available to respondents. The customer's interest in not having services terminated is self-"

"evident, the risk of erroneous deprivation of services is not insubstantial, and the utility's interests are not incompatible with affording notice and procedure described above. Mathew v. Eldridge, 424 U. S. 3;9 Pp 16-19"

Where was the 2nd CA in 1978? Did the Justices read the U.S. Reporter? It was not held by this court to be Craft's duty to litigate unknown rights but the duty of Memphis L & P to provide him with opportunity and personnel to correct errors in Craft's complaint.

So here too the 2nd CA wrong in holding or upholding Tucker had to litigate unknown rights in state court - instead it is claimed to be duty of state court judges to notice Tucker of his defenses and give him a chance at a meaningful hearing.

What do the rules do instead. See Appendix C PB 506 allows appointment of rent receiver on hearsay by plaintiff bank's attorney.

V. 2nd CA VIOLATED THIS COURT'S RULING UNKNOWN LAW CAN BE LITIGATED IN FOLLOW ON CASE ONCE ESTABLISHED

The 2nd CA upheld District Judge Dorsey's holding that Tucker "could have litigated" unknown law in the state court four foreclosure actions. But this court

has long ago held such a burden cannot be imposed on attorneys let alone pro se litigants who need and are entitled as a due process right to a chance to amend and a statement by District Court of amendments needed.

Curtis Publishing Co v Butts
388 US 143 1966

"Butts makes two arguments in support of his contention that Curtis' failure to raise constitutional defenses amounted to a knowing waiver. The first is that the general state of the law at the time of this trial was such that Curtis should, in the words of the Fifth Circuit majority, have seen "the handwriting on the wall." 351 F. 2d, at 734. We cannot accept this contention. Although our decision in *New York Times* did draw upon earlier precedents in state law, *e. g.*, *Coleman* v. *MacLennan*, 78 Kan. 711, 98 P. 281, and there were intimations in a prior opinion and the extra-judicial comments of one Justice,[7] that some applications of libel law might be in conflict with the guarantees of free speech and press, there was strong precedent indicating that civil libel actions

were immune from general constitutional scrutiny.[8] Given the state of the law prior to our decision in *New York Times*, we do not think it unreasonable for a lawyer trying a case of this kind, where the plaintiff was not even a public official under state law, to have looked solely to the defenses provided by state libel law."[9]

Just like Curtis this Petitioner looked only at established state law in 1981 and after this new federal law established in 1983 commenced timely this action in the District Court of Connecticut.

Curtis Pub Co v Butts
388 US 144 1966

" First, as a general matter, we think it inadvisable to determine whether a "right or privilege" is "known" by relying on information outside the record concerning the special legal knowledge of particular attorneys. Second, even a lawyer fully cognizant of the record and briefs in the *New York Times* litigation might reasonably have expected the resolution of that case to have no impact on this litigation, since the arguments advanced there depended so heavily on the analogy to seditious libel. We think that it was our eventual resolution of *New York Times*, rather than its facts and the arguments presented by counsel, which brought out the constitutional question here. We would not hold that Curtis waived a "known right" before it was aware of the *New York Times* decision. It is agreed that Curtis' presentation of the constitutional issue after our decision in *New York Times* was prompt."

Was the 2nd CA wrong imposing on this poor pro se litigant a higher standard than that imposed by This Honorable Court on professional attorneys?

May this action be reversed on sound doctrine, in Curtiss, Supra.

In Garguil/Lombard, supra, doctrine 2nd CA held for 1983 civil rights action res judicata would not apply to issues not actually litigated in state court. That rule applied here means this action must be reversed.

VI. 2nd CA ERRED UPHOLDING DECISION THAT PETITIONER HAD NO STANDING

The 2nd CA upheld a lower court holding Petitioner had no standing.

But in his amended complaint this Petitioner alleged he suffered continuing damages in loss of rent and deprivation of his four properties foreclosed by use of Conn PB 504-510 all repugnant to the Constitution of the United States.

106 Mile Transport Asso v Koch
656 F Supp at 1480

> "[2] A plaintiff, therefore, must demonstrate that he has suffered some "distinct and palpable injury," that the injury is the result of the defendant's allegedly illegal conduct and that his or her injury is likely to be redressed by relief afforded by the court. *Id.; Matter of Appointment of Independent Counsel*, 766 F.2d 70 (2d Cir.) *cert. denied*, — U.S. —, 106 S.Ct. 569, 88 L.Ed.2d 554 (1985). "

Surely it can be said that when this case goes to the jury and the jury hears evidence that the bank carried out a strict foreclosure on a house bank valued at $10,000.00 and now that same house for sale with only cosmetic changes for $179,000.00 it can reasonably be expected the jury will award this Petitioner appropriate damages.

Simon v Eastern Ky, Welfare Rights Org
426 US at 26 1975

> "federal plaintiffs must allege some threatened or actual injury resulting from putative illegal action"
> Linda R S v Richard D 410 US 617

VII ABSTENTION DOCTRINE NOT APPLICABLE

The abstention doctrine lastly pronounced in Pennzoil Co. v Texaco, 55 LW 4457, does not apply here because Tucker no longer has a state court action pending in which to seek his remedy. The four foreclosure cases in state court had pleadings last filed in 1981 and went to final judgment in 1985. No action left to raise these issues of newly formed law in. No longer is appeal possible to the Connecticut Supreme Court but only on discretionary petition for

Certification, a matter of discretion to the state court under PB 4126-4133. Regularly the Conn. Sup Ct. dismisses challenges to court rules.

Tucker v American Ins
3 Conn App at 399

> "It would seem that the policy of requiring application for permission to bring suit against the receiver in the original court is so firmly established in this State that a change in the policy should be enunciated either by our Supreme Court or prescribed by statute."

Tucker v American Ins
196 Conn 802 1985

> "The plaintiff's petition for certification for appeal from the Appellate Court, 3 Conn. App. 397, is dismissed."

Appellate Court will not rule without guidance & Sup Ct dismisses challenges to rules. Abstention has no place in this action.

This Honorable Court established a three prong test for Younger abstention that was recently applied by the 9th CA on Sept 9th, 1988 in:

Beltran v California & United Farm Workers
9th CA Nos 87-5942 and 87-5943

" We review *de novo* the district court's refusal to abstain under *Younger*. *Polykoff v. Collins*, 816 F.2d 1326, 1332 (9th Cir. 1987); *Fresh Int'l Corp. v. Agricultural Labor Relations Board*, 805 F.2d 1353, 1356 & n.2 (9th Cir. 1987).

Younger abstention embodies "a strong federal policy against federal-court interference with pending state judicial proceedings, absent extraordinary circumstances." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). In *Fresh Int'l*, 805 F.2d at 1357-58, we summarized the requirements of *Younger* abstention:

> Under the three-pronged test announced by the Supreme Court in *Middlesex* and applied in *Dayton*, abstention is appropriate in favor of a state proceeding if (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions.

(citations omitted). This case meets each requirement. Consequently, we hold that the district court erred in refusing to abstain. We consider each criterion in turn. "

Applying this Middlesex test to this case we find abstention not applicable.

	Test 1- State proceedings final 1985
This	Test 2- No state interest in rent
Action	receiver rules of court
	Test 3- State proceedures inadequate

Conn. uses hearsay as approved in PB 506 (see Appendix C) for appointing and keeping rent receivers so no "meaningful" hearing possible for property owners.

Sup Ct will no longer grant certiorari to review constitutionality of rules. See P19 infra.

VIII. RES JUDICATA DOES NOT APPLY BECAUSE FEDERAL LAW CHANGED AND ISSUES AND PARTIES ARE DIFFERENT

With Santa Claus generosity, the District Judge ruled res judicata applied without any showing the facts to be identical the causes of action to be identical and ignoring that the federal law changed since pleadings filed in the four state court foreclosure actions in 1981.

FRCP Rule 8 (c) "In pleading...a party... shall set forth affirmatively..res judicata.."

While in their motion to dismiss defendants raise defense of res judicata their motion unsworn and in opposition Petitioner filed sworn statement that in state court he did not plead the constitutional issues raised herein and that federal law on constitutional issues arose after state court pleadings closed. THE CLAIMED RES JUDICATA DISPUTED UNDER OATH AND NO EVIDENCE TAKEN TO RESOLVE THE DISPUTE - surely the District Court a Santa Claus to the bank and defendants.

Jones v Miller
2 RFD 479 "Motion to Dismiss on grounds of res judicata denied where facts insufficient to establish question without further facts."

In this action the facts needed to settle the dispute never taken into evidence.

Davis v US Steel
688 F 2d 166
Certiorari Denied
460 US 1014 "Res Judicata affirmative defense, party claiming it bears burden of proof"

Defendants offered no proof on their disputed defense.

U. S. v Harrison County, Mississippi
399 F 2d 485
Re-Hearing Denied 414 F 2d 787
Certiorari Denied
397 US 918

> "In order to sustain plea of res judicata there must be identity of things such as identity of cause of action, identity of persons and parties to the suit, identity of quality and character of person against whom claim is made"

BUT THE FOUR STATE COURT FORECLOSURES DO NOT MEET THIS TEST.

1. The issue in state court was the state law claims to permit foreclosure.
2. This issue in this case is the unconstitutionality of CT PB 504-510.

3. The defendants in state court include all lien holders not parties to this action.

4. The parties to this action include attorneys who applied the unconstitutional rules to seize four properties in violation of Constitution.

Muchard v Bereman
307 F 2d 368
Certiorari Denied
371 US 982

"Res Judicata is no defense where between the 1st and 2nd judgment law changed creating a different situation"

The decisions rendered in federal court in Wright, supra, and Nelson, supra (P13-14 brief) changed law in 1983 to provide a sound legal basis for this federal complaint. That law did not exist in 1981 when state court pleadings closed.

IX. The 2nd CA A GAS CHAMBER FOR PRO SE

The law in federal court has long been that the allegations of the complaint are true for purposes of motion to dismiss. THIS PETITIONER ALLEGED UNDER OATH THAT HE DID NOT AND COULD NOT LITIGATE THESE NEW ISSUES IN STATE COURT FORECLOSURES. Yet the 2nd CA used hearsay allegations that speculated... "he could

have litigated" and dismissed without any evidence being taken on disputed facts.

In re Longhorn Securities Litigation
573 F Supp 255 (1983)

7. Federal Civil Procedure - 1772, 1829, 1835

"In the context of motion to dismiss court must construe challenged pleadings in the light most favorable to the plaintiff, must accept as true all well pleaded factual allegations and reasonable inferences therefrom, and must disregard all legal or unsupported conclusions; complaint should not be dismissed merely because plaintiff's allegations do not support his state of legal theory as the court is obligated to determine whether the allegations support relief on any possible theory. Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A."

CONCLUSION

May this Court summarily reverse on Supreme Court of Virginia, and Karim-Panahi, supra, or alternatively note probable jurisdiction.

RESPECTFULLY:

STANLEY V. TUCKER
Petitioner

APPENDIX A- Connecticut General Statute 51-14

§ 51–14. Rules of court. Disapproval of by general assembly. Hearings

(a) The judges of the supreme court, the judges of the appellate court, and the judges of the superior court shall adopt and promulgate and may from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in courts in which they have the constitutional authority to make rules, for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits. The rules of the appellate court shall be as consistent as feasible with the rules of the supreme court to promote uniformity in the procedure for the taking of appeals and may dispense, so far as justice to the parties will permit while affording a fair review, with the necessity of printing of records and briefs. Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts. Subject to the provisions of subsection (b), such rules shall become effective on such date as the judges specify but not in any event until sixty days after such promulgation.

APPENDIX B - United States Constitutional Amendments 5th & 14th

AMENDMENT V—GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Due Process Clause of Section 1 are set out in this volume and the preceding volume. See the volume containing Amendments 7 to 14 for materials pertaining to the Citizenship and Privileges and Immunities Clauses of that section and the volume containing the end of the Constitution for materials pertaining to the Equal Protection Clause of that section and sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C- Connecticut Practice Book Sections 504-511

Sec. 501. Duty of Clerks

The clerks shall see that these rules are enforced and shall promptly report any violations thereof to the court.
(P.B. 1963, Sec. 422.)

Sec. 502. Removal of Receivers

Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed him, or, if such court is not in session, a judge thereof, may fill the vacancy. (See Gen. Stat., § 52-513 and annotations.)
(P.B. 1963, Sec. 423.)

Sec. 503. Ancillary Receivers

These rules, so far as applicable, shall govern the appointment and duties of ancillary receivers.
(P.B. 1963, Sec. 424.)

Sec. 504. Receiver of Rents
(P.B. 1963, Sec. 425.)

Sec. 505. ——Applicability of Previous Sections

Sections 485 through 500 shall not apply to receivers of rents.
(P.B. 1963, Sec. 426.)

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

Sec. 507. ——Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of his appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of and described as (*describe generally, e.g., No. 93 Maple Street*):

Now, therefore, if said A shall well and truly perform his duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

(P.B. 1963, Sec. 428.)

Sec. 508. ——Discharge

Any party in interest may at any time move for the discharge of the receiver.

(P.B. 1963, Sec. 429.)

Sec. 509. ——Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by him in chambers to the court in which the action may be pending.

(P.B. 1963, Sec. 430.)

Sec. 510. ——Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1963, Sec. 431.)

APPENDIX D - Decision 2nd CA
Denying Re-Hearing in Banc

United State Court of Appeals

For the Second Circuit

TUCKER V NORTHEAST	No 87-9071 July 5th, 1988

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Plaintiff-Appellant, STANLEY TUCKER, pro se.

Upon consideration by the panel that heard the appeal, it is

ORDERED that the said petition for re-hearing is DENIED.

It is further noted that the suggestion for re-hearing in banc having been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that not such judge has requested that a vote be taken thereon.

APPENDIX E - Decision 2nd CA Dismissing Appeal

United States Court of Appeals

For the Second Circuit

TUCKER -v- NORTHEAST	No 87-9071 May 2, 1988

Before Justices : Kaufman
Pierce
Altimari

... it is ORDERED that the motion to dismiss be and hereby is granted.....

APPENDIX F - Decision USDC - Connecticut
DISMISSING COMPLAINT

United States District Court

District of Connecticut

STANLEY V. TUCKER v. NORTHEAST SAVINGS FA et al	CA No H 87 282 RULING ON MOTIONS TO DISMISS December 16, 1987

Plaintiff brings this action under 42 USC 1983 alleging violations of due process in connection with four foreclosure actions in state court filed against him in 1978. Defendant Northeast Savings, FA is the corporate successor of Hartford Federal S & L Assoc., the bank which filed the foreclosure actions in Connecticut Superior Court and in favor final judgments of foreclosure were entered in 1985. Defendant Robert Basine is an attorney who represented the banks in the forclosure actions.

Defendants Donna Galluzzo and Lorraine Whitehead were not involved in the foreclosure actions but subsequent ly bought the foreclosed properties from Northeast in June, 1986.

Footnotes omitted

Facts and Procedural History

Plaintiff's 2nd Amended Complaint is not a model of clarity, despite his extensive experience as a pro se litigant in both state and federal court systems. 1/ The complaint is not organized into separate counts or claims for relief and mixes factual allegations against defendants with legal arguments that the procedures followed in the state court actions were unconstitutional. For the purposes of the motions to dismiss, the court finds only the factual allegations to be true.

In September 1978 defendant Basine, acting as attorney for Hartford Federal, commenced four separate foreclosure actions on properties in which plaintiff held equity. Basine moved for appointment of a rent receiver for the properties, pursurant to Conn PB 504-510. Over plaintiff's objections a receiver was appointed. Plaintiff alleges he was not given notice of his defenses to the appointment of a receiver and that negligence of the receiver caused the properties to decline sharply in value.

Footnotes omitted

The bank then obtained judgements of foreclosure by default based upon Tucker's failure to file timely pleadings. Tucker had filed his answer, special defenses and counter claims on the day the motion for default came before the trial court for hearing, but that court refused to accept them. The judgements of foreclosure were vacated upon appeal on ground that the pleadings were not untimely and the case remanded for further proceedings, 181 Conn 607.

On remand the 1st rent receiver resigned and defendant Basine, for Hartford Federal, moved for appointment of a second receiver. That motion was granted and a second receiver appointed, allegedly without affording Plaintiff meaningful hearing and without notice to Plaintiff of his valid defenses. Plaintiff also alleges that the second receiver's negligence caused the properties to decline in value and to be foreclosed at depressed valuations and that defendants Basine and the banks concealed this negligence from him and the court.

Footnotes omitted

After a trial on the merits the Superior Court granted judgements of strict foreclosure to the bank. These judgements were upheld on appeal. 196 Conn 172. In his appeal, plaintiff raised constitutional due process challenges to the appointment of the receivers and to the procedures by which the appointments were made which the court rejected, Id at 175-79, 182 (rejecting due process claims, special defenses and counter claims); See opposition to Motion to Dismiss, Exhibit A at 104-105 (counterclaim raised on appeal based upon due process challenges).

Discussion

In considering a motion to dismiss the complaint of a pro se litigant, the court must consider all possible claims which are fairly presented in the complaint. To warrant dismissal of a pro se complaint, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Huges v Rowe, 449 US 5, 10 (1986) See also Bass v Jackson, 790 F 2d 260, 262 (2nd CA 1986) A pro se litigant, unfamiliar with technical rules of pleading, ought not suffer dismissal if his complaint "sets forth matters, that, with some refinement, can constitute legally sufficient claims".

Salahuddin v Coughlin 781 F 2d 24, 29. 2CA

The allegations of plaintiff's Second Amended Complaint fall into three main categories:

First, Tucker attacks the results of the state foreclosure actions, alleging that the state trial court violated his due process rights in appointing rent receivers upon Basine's hearsay applications without giving notice of Tucker's defenses. See, e.g., Second Amended Complaint PP4, 15, 18, 23, "Relief by way of declaratory judgement" P2. He also alleges that the trial court's application of Conn PB 504-510 to appoint rent receivers in the foreclosures deprived him of due process.

Specifically, he argues that the Practice Book violates Conn GS 51-14 and did not provide that he

received notice of his defenses; did not establish standards to govern the appointment of the rent receiver; and allowed the receivers to be appointed upon Basine's hearsay representations without affording Tucker a meaningful opportunity to be heard.

Second, plaintiff alleges that defendants willfully utilized the allegedly unconstitutional procedures to deprive him of his property, i.e., the four properties which were the subject of the foreclosures. See Second Amended Complaint, PP 4,5,6. The extent of the interrelation of this second category of claims to the first category is illuminated by plaintiff's claims for relief. Tucker asks for "declaratory judgments" that the four strict foreclosure judgements are null and void; that the equity of the property remains vested in him; that the deed to Galluzzo and Whitehead is void. Second Amended Complaint at 11. He further seeks damages for all rents which he would have collected, plus fees and cost of litigating the earlier actions, Second Amended Complaint at 11-12.

Third, the complaint can be read to challenge the constitutionality of the rent receiver rules on their face and to seek a declaratory judgement that the Practice Book 504-510 are unconstitutional because they allow the deprivation of property without due process of law. Second Amended Complaint PP 7-14

Jurisdiction

Defendants argue that, to the extent the complaint seeks review of the state court judgements, this court lacks subject matter jurisdiction. A federal district court has no subject matter jurisdiction to review the final judgement of a state court. District of Columbia Court of Appeals v Feldman 460 US 462, 482 1983; Rooker v Fidelity Trust Co, 263 US 413, 415-416 (1923). Such review may only be had in the Supreme Court of the U.S. In his appeal to the Conn Sup CT plaintiff argued, as he does here, that the procedures for the appointment of rent receivers denied him due process of law, see 196 Conn at 176, and that the Superior Court had erred in undervaluing the properties, in ordering strict foreclosure, and in

denying his special defenses and counterclaims, Id at 179-80. The state courts have rejected these claims and the United States Supreme Court has denied certiorari for review of those determinations. Id 106 U S Ct 250.

To the extent that the complaint seeks to challenge the merits of the state court determination of those issues, that challenge is beyond the jurisdiction of this court. See Pennzoil Co v Texaco, 55 LW 4557 4463 (April 7, 1987) It is irrelevant that Tucker did not specify in the state, as part of his due process challenges to the CT statutes and rules, the precise ground that the Practice Book procedures did not afford him notice of his defenses. 2/ The factual and legal basis for that claim was available to him throughout the state court proceedings and had he chosen to present the claim those courts were competent to adjudicate it. 3/ Texaco v Pennzoil 784 F 2d 1133, 1142 (2 Cir 1986) rev'd on other grounds, 55 US LW 4457, see District of Columbia Court of Appeals, 460 US at 484 n .16 (litigant may forfeit

right to obtain review of constitutional claims in any federal court by failing to raise them in state proceedings). Indeed the Conn Sup Court addressed Tucker's other due process challenges to the application of the rent receiver rules and there is no allegation that he was refused an opportunity to raise the present claims.

Tucker attempts to cast his challenge to the outcome of the state court proceedings as a 1983 cause of action. However, his characterization of his claim does not confer jurisdiction upon a federal district court where the federal claim is "inextricably intertwined with the merits of a state court judgment." Pennzoil, 55 US LW 4464 (Marshall, J. concurring in the judgment") quoting District of Columbia Court of Appeals, 460 US at 483-48 n 16. The gravamen of Tucker's constitutional claim is that defendants used unconstitutional state court procedures to deprive him of his property. A judgment for plaintiff on his 1983 claim, awarding damages for lost rent and title to the subject properties would

require a finding that he was denied due process by the state court's application of the rent receiver rules. However, the Connecticut Supreme Court determined that the application of the state procedures to Tucker in the foreclosure proceedings did not deny him due process of law and that he was given notice and a meaningful opportunity to be heard in the appointment of the receiver. 196 Conn at 177. It is clear that the federal relief sought by Tucker "can only be predicated upon a conviction that the state court was wrong". Pennzoil, 55 US LW at 4463. That this court is without jurisdiction to do.

Tucker seeks to reticulate the state proceedings by the device of naming as defendants the party which prevailed in state court and its attorney. This is no less an attempt to convert an appeal of a state judgement into a 1983 cause of action. The portions of the complaint which allege that plaintiff was deprived of property without due process of law by defendant's application of the rent receiver

procedures of PB 504-510 in the state foreclosure proceedings must be dismissed for lack of subject matter jurisdiction.4/

Standing

The remaining portions of the complaint, not directed at the outcome of the foreclosure actions, may be read as a general challenge to the constiutionality of the rent receiver procisions as failing to provide due process to property owners. See Second Amended Complaint PP 7-14 7-14. Such a challenge is within the subject matter jurisdiction of this court. See DC Court of Appeals, 460 US at 483 (distinguishing review of state court application of procedures from general challenge to their constitutionality). Defendants argue that Tucker has no standing to raise a facial challenge to the procedures because he is barred from asserting any past injury caused by the application to him and thus presents no justiciable issue.

Article III of the Constitution requires that "(a) plaintiff must allege personal injury fairly

tracable to the defendant's unlawful conduct and likely to be redress-by the requested relief." Allen v Wright 468 US 737, 751 (1984) see US v Herrara, 584 F 2d 1137, 1148 (2 Cir 1978) (where criminal statute was valid as applied to convicted defendants, they had no standing to assert a broad challenge based on rights of others). Thus, a plaintiff seeking a declaratory judgment that a state law or procedure is invalid must allege that he has suffered, or will suffer, a cognizable injury from the application of the state law which the judgment will redress. Simon v E. Kentucky Welfare, 426 US 26, 38, (1976); Asso Against Discrimination in Employment v City of Bridgeport 710 F 2d 69, 73 (2 cir 1983).

Plaintiff's complaint does not meet this threshold test. Each of the injuries alleged relate to the State Court proceedings and to claims of error therein. As discussed above, the state proceedings are not reviewable by this court and they cannot form a cognizable basis for a facial challenge to the rent receiver procedures. Even if the court were to

undertake such review and declare the procedures invalid, res judicata would prevent the court from granting the redress plaintiff seeks--effectively a reversal of the state court judgments of foreclosure. Thus, the declaratory relief requested will not redress the injury claimed. Duke Power Co v Carolina Environmental Study Group, 438 US 59, 75 N.20 (1978). (requiring "substantial likelihood" that relief requested will redress injury). The prior state judgments have conclusively established that plaintiff was not deprived of due process by the application of the Connecticut rent receiver procedures. Those judgements are conclusively adjudicated and cannot constitute redressable "injuries". There is no allegations that prospective applications of the rent receiver rules will cause him any actual or imminent injury. Thus, plaintiff has no standing to challenge the constitutionality of Practice Book 504-510. See Northeast Bancorp v Woolf, 576 F Supp 1225, 1232 (D Conn 1983) aff'd 742 F 2d 1439 (2 Cir 1984)

Conclusion

Accordingly the complaint must be dismissed in its entirety. Defendant's motions to dismiss are granted.

SO ORDERED

Dated at Hartford, Connecticut this 16th day of December, 1987

s/
Peter C. Dorcey
United States District Judge

Supreme Court, U.S.
FILED
NOV 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

DOCKET NO. 88-719

SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1988

STANLEY V. TUCKER,

Petitioner,

V.

NORTHEAST SAVINGS, F.A.,
ROBERT R. BASINE, DONNA GALLUZZO,
LORRAINE WHITEHOUSE d/b/a CAPITAL WEST

Respondents.

On Petition For a Writ of Certiorari To The
United States Court of Appeals
For the Second Circuit

JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

For Respondents Northeast Savings, F.A. and Robert R. Basine:

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1HPP

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Second Circuit has decided this case in a way that is in conflict with the decision of another federal court of appeals on the same matter.

2. Whether the United States Court of Appeals for the Second Circuit has decided an important question of federal law which has not been settled by the United States Supreme Court.

3. Whether the United States Court of Appeals for the Second Circuit has decided an important question of federal law in a way in conflict with applicable decisions of the United States Supreme Court.

4. Whether The United States Court of Appeals for the Second Circuit has fully considered and properly decided the issue of whether the decisions of the Connecticut courts were res judicata of the petitioner's constitutional claims raised in his Section 1983 action.

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STATEMENT OF THE CASE

This case arose from four foreclosure actions against the petitioner brought in the Superior Court of Connecticut which concluded in favor of Hartford Federal Savings & Loan Association, corporate predecessor of appellee Northeast Savings, F.A., in 1979. Respondent Robert R. Basine, an attorney, represented Northeast Savings in the foreclosure proceedings and in subsequent appeals in state courts. Some of the properties involved were ultimately sold to respondents Galluzzo and Whitehouse, but prior to any sale and following the issuance of the foreclosure judgments, the Superior Court appointed several receivers of rents. The petitioner, Stanley Tucker, concedes that in fact he was present, was granted a hearing, and voiced his objections, at the time of each appointment. For this reason, on appeal the Supreme Court of Connecticut held that the Superior Court's rent receiver rules, embodied in Connecticut Practice Book Sections 504 through 510, had accorded Mr. Tucker due process of law and therefore were constitutional both as applied and facially. *Hartford Federal Savings & Loan Association v. Tucker,* 196 Conn. 172, 177, *cert. denied,* 474 U.S. 920 (1985). Moreover, as to that ruling, the United States Supreme Court denied certiorari. *Tucker v. Hartford Federal Savings & Loan Association,* 474 U.S. 920 (1985).

Having exhausted the appellate procedures of both the state and the federal judiciaries, Mr. Tucker filed this lawsuit in the United States District Court for the District of Connecticut under 42 U.S.C. Section 1983, again on the ground that the state court's rent receiver rules unconstitutionally denied him due process of law, and therefore were unconstitutional both as applied and on their face. The respondents filed a Motion for More Definite Statement and Motion to Strike portions of the Complaint, both of which were granted by order dated August 31, 1987. After the petitioner filed an amended complaint pursuant to that order, the defendants moved to dismiss the action. By order dated December 15, 1987, Judge Peter C. Dorsey granted the defendants' Motions to Dismiss on the

grounds that the District Court lacked subject-matter jurisdiction of the appellant's claims and that those claims were *res judicata*. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-4 - F-11.

The petitioner, however, appealed Judge Dorsey's Ruling to the United States Court of Appeals for the Second Circuit (hereafter, "Second Circuit"). By order dated May 2, 1988, a three-judge panel granted the respondents' Joint Motion to Dismiss and for Summary Affirmance "substantially for the reasons stated in the Memorandum and Order of Judge Peter C. Dorsey". Second Circuit Order. The petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc were denied by the Second Circuit's Order dated July 5, 1988. Petitioner's Appendix D. Finally, the petitioner filed his corrected Petition for a Writ of Certiorari in the United States Supreme Court on October 26, 1988, his initial Petition dated September 29, 1988 having been rejected for failure to comply with procedural rules.

ARGUMENT

I. *The Second Circuit Has Decided This Case In A Way that is Consistent With The Decisions Of Other Federal Courts on The Relevant Issues.*

The petitioner contends that the Second Circuit's dismissal of his appeal runs counter to one case decided in the Ninth Circuit and others decided in the District of Columbia Circuit. This contention is false.

The Ninth Circuit case is *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621 (9th Cir. Feb. 16, 1988). In that case, a *pro se* litigant appealed the dismissal of his amended complaint, which was based in part on Section 1983. The plaintiff had amended his original complaint after the district court had granted the defendant's motion to dismiss without prejudice and instructed the plaintiff to make his complaint shorter and more concise. The Ninth Circuit reversed the district

court's order of dismissal because the *pro se* plaintiff had mistakenly eliminated from his amended complaint a portion of the original complaint essential to his Section 1983 claim. The appellate court found that the district court's instructions to the plaintiff regarding amendment of the Complaint were too vague.

> We do not, of course, require the district court to act as legal advisor to the plaintiff. However, the court must do more than simply advise the pro se plaintiff that his complaint needs to be shortened and more concise. . . .

Id. at *626*.

The petitioner cites no District of Columbia Circuit cases on point, but instead refers without specification to a news item which supposedly chronicles such cases. This hardly meets the standard of argument required to support a petition for certiorari. Accordingly, the respondents are obliged to distinguish the instant case only from *Karim-Panahi*.

And indeed, *Karim-Panahi* is easily distinguishable. The holding in *Karim-Panahi* does not apply if the "deficiencies in the section 1983 claims . . . cannot be cured by amendment". The deficiencies cited by Judge Dorsey — lack of subject-matter jurisdiction, res judicata, and lack of standing — obviously could not be so cured.

Moreover, the *Karim-Panahi* court found only that the *pro se* litigant should have been given a chance to amend the complaint to cure merely formal defects. In this case, Tucker has already been given *that* chance, having filed a Second Amended Complaint following a district court order granting the defendants' Motion to Strike and Motion for More Definite Statement. Thus, the Ninth Circuit case applies only to a situation in which a defendant has *prematurely* filed a Rule 12 (b) (6) motion to dismiss, when a motion to strike and/or motion for more definite statement would have been appropriate. It is plain in this case that such a situation did not confront the district court below.

Mr. Tucker's contention that the courts of appeals are in conflict as to the applicable criterion for dismissing a *pro se* litigant's complaint, then, is wholly illusory. Certiorari should be granted only where there is a real and embarrassing conflict of authority between courts of appeals. *Rice v. Sioux City Memorial Park Cemetery,* 399 U.S. 70 (1955). Accordingly, the court should not grant certiorari in this case on the basis of any alleged conflict among the courts of appeals.

II. *The Second Circuit Has Not Decided Important Questions of Federal Law Which The United States Supreme Court Has Not Addressed.*

The Second Circuit's order of dismissal incorporates by reference the reasoning of the District Court's ruling dismissing the complaint. That ruling, in turn, is based on three legal principles well established in federal law. These principles are (1) subject-matter jurisdiction, (2) res judicata, and (3) standing. Ruling on Motion to Dismiss, Petitioner's Appendix F. *See Migra v. Warner City School District Board of Education,* 465 U.S. 75 (1983) (state court decisions on constitutional issues are res judicata of federal court decisions on those issues in Section 1983 actions); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983) (district court has no subject-matter jurisdiction to review final judgment of a state court); *Broadrick v. Oklahoma,* 413 U.S. 60 (1983) (litigant has no standing to challenge constitutionality of state rule which was constitutionally applied to that particular litigant).

The petitioner's argument from cases concerning state court or state bar rules is simply inapposite. The only case he cites that even approaches relevance to the instant case is *District of Columbia Court of Appeals v. Feldman, supra,* 460 U.S. 462 (1983). In that case, the Supreme Court held that federal district courts have subject-matter jurisdiction over constitutional challenges of rules promulgated by state courts in non-judicial proceedings, such as the rules the petitioner challenges here, only if they have not already have been challenged in state court proceedings. 460 U.S. at 485. This ruling is not only consistent with but is required by 28 U.S.C. Section 1738, which provides

that a state court judgment be given the "same full faith and credit" in the federal courts as it would be given in the court of the state rendering the judgment.

As district Judge Dorsey made quite plain, the petitioner has indeed *already* challenged the state court rent receiver rules in all of the Connecticut courts having appropriate jurisdiction, which challenge culminated in *Hartford Federal Savings & Loan v. Tucker, supra,* 196 Conn. 172, *cert. denied,* 474 U.S. 920 (1985). Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-4, F-7 - F-11.

It follows that the District Court in fact had no subject-matter jurisdiction of Mr. Tucker's present Section 1983 claim under the clear precedent of this Court, and under 28 U.S.C. Section 1738. Accordingly, neither the District Court nor the Second Circuit has rendered a decision on an issue which the United States Supreme Court has not addressed.

III. *The Second Circuit Has Not Decided This Case in a Way That is in Conflict With Any Decisions of The United States Supreme Court.*

Mr. Tucker argues that the Second Circuit has acted contrary to Supreme Court precedent on the matters of standing and abstention. Mr. Tucker, once again, is palpably incorrect.

According to the petitioner, he was deprived of the value of his property due to the Connecticut Superior Court's judgments of strict foreclosure, and therefore has standing to sue on the basis of that court's application of the rent receiver rules *pursuant* to the judgments of foreclosure. This, obviously, is a flagrant non sequitur, reflecting a mismatch of the injury and its cause.

The denial of due process allegedly visited on Mr. Tucker by the application of the rent receiver rules did not cause the deprivation of property which Mr. Tucker cites in support of his standing. Rather, the prior foreclosure proceedings caused that deprivation, but Mr. Tucker does not challenge the constitutionality of those proceedings. Thus, the salient requirement of standing established by the United States

Supreme Court — namely, a nexus between the injury and the defendant's alleged action — is missing here. *E.g., Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). *See also Association Against Discrimination in Employment, Inc. v. City of Bridgeport*, 710 F.2d 69, 73 (2d Cir. 1983) ("A litigant is not entitled to have the court decide the merits of an issue he raises unless he can show some basis for arguing that the challenged action has caused him some cognizable injury.").

Given this lack of a nexus between injury and the allegedly unconstitutional action, the petitioner's Section 1983 claim amounts to a general or "facial" challenge to the rent receiver rules, which is clearly prohibited in constitutional adjudication on the strength of the precedent of this court proffered by Judge Dorsey. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-11 - F-13.

Next, Mr. Tucker makes a classic "straw man" argument. To wit, he asserts that *Younger* abstention is not applicable to this case. The respondents are in complete agreement with this assertion, and in fact have never argued that the *Younger* doctrine did apply. Indeed, in their Joint Memorandum of Law in Support of Motion to Dismiss and for Summary Affirmance (hereafter, "Joint Memorandum"), they explicitly stated:

> That [*Younger*] doctrine is intended only to avoid the risk of federal judicial interference with *ongoing* state proceedings. As all state proceedings have concluded in the instant case, *Younger* abstention is simply inapplicable. . . .

Joint Memorandum, p. 4 (emphasis in original).

Instead, the thrust of the respondents' argument was that while *Younger* abstention is a discretionary doctrine, the stronger *Rooker-Feldman* doctrine operates mandatorily to foreclose federal jurisdiction where, as here, state proceedings on the same issue have been concluded, and review in the United States Supreme Court either is available or has been denied. Joint Memorandum, pp. 3-6. *See Pennzoil Co. v. Texaco, Inc.*, 107 S. Ct. 1519 (1987); *District of Columbia Court of Appeals v. Feldman, supra*, 460 U.S. 462; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *See also Younger v. Harris*, 401 U.S. 37

(1971). This was precisely the holding of District Judge Dorsey, which the Second Circuit endorsed. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-7 - F-11.

The petitioner's arguments as to both standing and abstention, then, provide no basis for this Court to grant certiorari.

IV. *The Second Circuit Fully Considered And Properly Decided The Question of Whether The Decision in The Supreme Court of Connecticut Was Res Judicata of The Petitioner's Constitutional Claims.*

The petitioner's final argument is that the Second Circuit and District Court incorrectly upheld the respondents' defense of res judicata. Specifically, he claims that the state proceedings and the federal proceeding were not identical as to the issues or parties. In fact, the issues of both the as applied validity and the facial validity of the rent receiver rules were fully litigated in the state proceedings. While this Section 1983 claim and the state proceedings may not be strictly identical in all of their particulars, as Judge Dorsey noted, "[t]he prior state judgment is preclusive as to all issues actually litigated in that action, including the issue of whether the state procedures afforded Tucker due process". Ruling on Motion to Dismiss, p. 9, footnote 4 (citing *Friarton Estates Corp. v. City of New York*, 681 F.2d 150, 158-59 (2d Cir. 1982) (Friendly, J.)).[1] *See also Allen v. McCurry*, 449 U.S. 90 (1980) (state proceedings have collateral estoppel effect on Section 1983 actions).

Mr. Tucker also seeks to distinguish his Section 1983 action from the state proceedings on the basis of two District of Connecticut cases, decided in 1983 after the pleadings in the initial state lawsuit were closed, purportedly establishing a right of a prospective defendant to be notified of any defense he or she may have prior to a deprivation of property. He neglects

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[1]Footnote 4, containing the quoted language, is conveniently and conspicuously omitted from the petitioner's reproduction of Judge Dorsey's ruling in Appendix F of the Petition for a Writ of Certiorari. *See* Petitioner's Appendix F, p. F-11.

to add that Judge Dorsey squarely confronted this issue. Specifically, Judge Dorsey noted that Mr. Tucker's appeal to the Supreme Court of Connecticut and corresponding petition for certiorari to the United States Supreme Court were not brought until 1985, so that the petitioner knew of his right to notice of defenses at that time and could have litigated any deficiency in the rent receiver rules relating to such notice in the state proceedings. Ruling on Motion to Dismiss, p. 7, footnote 3.[2] Accordingly, *District of Columbia Court of Appeals v. Feldman, supra,* 460 U.S. at 484 n.16, precludes relitigation here of that issue as well as the issues outlined above. Ruling on the Motion to Dismiss, Petitioner's Appendix F, pp. F-8 - F-9.

Thus, the courts below have fully considered the arguments against the application of res judicata principles in this case, and correctly decided that they were invalid.

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[2]Mr. Tucker also selectively deleted this footnote from his Appendix F. *See* Petitioner's Appendix F, p. F-8.

CONCLUSION

The District Court's decision in this case, adopted by the Second Circuit, is not in conflict with any of the decisions of the Second Circuit itself, other courts of appeals, or the United States Supreme Court. Further, that decision is in fact based on clear and settled Supreme Court precedent, and therefore does not call for clarification, express approval, or elaboration by the United States Supreme Court. *See generally* Sup. Ct. R. 17. Moreover, the result reached by the District Court is not merely technically well-founded in constitutional law; it is also eminently fair. It is beyond question that the petitioner was accorded a full and fair opportunity to litigate in state court and by petition for certiorari the constitutional claims that he has raised yet again in the instant case.

Finally, as a matter of sound judicial administration and policy, it would be imprudent to change long-standing federal law so as to make 42 U.S.C. Section 1983 authority for collateral attack on state court decisions and on denials of petitions for certiorari, as the petitioner seeks to do here. Were the Court to do this, the process of vindicating individual rights in the federal courts would be potentially interminable, and the competence of state courts to adjudicate federal rights under "our federalism" severely and perhaps irreparably degraded. *See Allen v. McCurry, supra,* 449 U.S. 90.

For these reasons, the respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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